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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

**No. 373**

CHARLOTTE CROSS JUST AND ANNE ELISE  
GRUNER,

vs.

*Petitioners,*

ALMA CHAMBERS, AS EXECUTRIX OF THE ESTATE OF HENRY  
C. YEISER, JR., AS OWNER OF THE AMERICAN YACHT  
"FRIENDSHIP II".

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT AND BRIEF IN SUP-  
PORT THEREOF.

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SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1940

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No. 373

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CHARLOTTE CROSS JUST AND ANNE ELISE  
GRUNER,  
*Petitioners and Appellees Below,*

*vs.*

ALMA CHAMBERS, AS EXECUTRIX OF THE ESTATE OF HENRY  
C. YEISER, JR., AS OWNER OF THE AMERICAN YACHT  
"FRIENDSHIP II",  
*Respondent and Appellant Below.*

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PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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*To the Honorable Charles Evans Hughes, Chief Justice of  
the United States, and the Associate Justices of the  
Supreme Court of the United States:*

Charlotte Cross Just and Anne Elise Gruner, petitioners,  
respectfully show:

A.

**Summary Statement of the Matter Involved.**

This is a proceeding in admiralty brought by the Executrix of the Estate of Henry C. Yeiser, Jr., deceased, to

secure a limitation of or exoneration from liability for personal injuries negligently occasioned by the deceased before his death (R. 1-5).

Petitioners were guests of Yeiser aboard his yacht on a week-end cruise (R. 2, 28, 33). The yacht was at all times within the territorial limits of the State of Florida (R. 58, 59, 609-621). Petitioners had been assigned and were occupying a double stateroom at the stern directly above the bilge through which ran the vessel's exhaust pipes (R. 829, 826). Petitioners suffered personal injuries as a result of carbon monoxide escaping into their stateroom due to Yeiser's negligence (R. 830, 831). Their injuries were occasioned with the privity and knowledge of Yeiser, the yacht owner (R. 832, 833), who died five days after the trip from causes unrelated to the accident (R. 28, 33, 78). Petitioners filed claims against his estate (R. 3, 28, 34).

The Executrix of Yeiser's estate then filed her petition in admiralty for limitation of liability upon the statutory ground that the injuries were "without the privity and knowledge" of Yeiser (R. 2), and alternatively prayed for exoneration on the ground that the accident was unavoidable (R. 2). Upon issuance of monition (R. 6) petitioners denied the right to limitation or exoneration, asserted that their injuries were a direct and proximate result of the deceased yacht owner's negligence (R. 30, 31, 36) and prayed for personal judgments against his estate (R. 31, 37). The cause was tried solely upon the issues of liability and the right to limit (R. 44, 45). At the conclusion of the trial the Executrix contended (for the first time) that, as a matter of law, all causes of action *in personam* had abated as the result of Yeiser's death (R. 822), notwithstanding that under the law of Florida (statutory and common) such causes of action survive the death of the tort-feasor. The District Judge entered his written opinion (R. 819-824) and decree (R. 825-835), finding that the injuries were negli-

gently inflicted with the privity and knowledge of Yeiser (R. 819-824, 831, 832); that exoneration and the right to limit should be denied (R. 822, 833); that where personal injuries are negligently caused upon waters within the territorial limits of a State and the tort-feasor thereafter dies, the statutes and common law of the State providing that such cause of action shall survive will be enforced in a Court of Admiralty (R. 822, 834)—and that therefore, as a matter of law, the causes of action *in personam* did not abate by reason of Yeiser's death.

From this decree for petitioners, an appeal was taken by the Executrix (R. 857). The Circuit Court of Appeals for the Fifth Circuit (Judges Sibley, Foster and Hutcheson) in a written opinion by Sibley, *C. J.* (R. 863-873) unanimously approved the findings of fact (R. 864) made by the District Judge (R. 825-835) and affirmed the decree in so far as it held that Yeiser was guilty of negligence and that the injuries were occasioned with his knowledge and privity (R. 865). A majority of the court (Sibley and Foster, *C. J.'s*), however, reversed the decree in so far as it held that the personal liability of the yacht owner survived his death as a result of the statutory and common law of Florida (R. 868). The majority held that a personal right of action abates upon the death of the wrongdoer under the common law "and there are admiralty precedents to the same effect" (R. 865); that therefore no effect can be given to the statutory and common law of Florida, providing that the death of a tort-feasor does not extinguish a right of action for personal injuries (R. 867-868), and that "uniformity requires it to be so" (R. 867). Hutcheson, *C. J.*, in a written opinion (R. 868-873), dissented from the latter holding on the ground that there is no "federal general law" or "any traditional maritime law" applicable to this case (R. 869) which prevents giving effect to the Florida rule, and that, since the action has no relationship to naviga-

tion "there is no necessity for uniformity" (R. 871). Judgment was entered affirming the decree as to the liability of the ship and reversing the decree in so far as it holds that personal liability of Yeiser survived his death (R. 873). Petition for rehearing by Charlotte Cross Just and Anne Elise Gruner upon the question of personal liability being abated was duly filed (R. 874), and denied July 31, 1940, without opinion (R. 894).

### B.

#### Jurisdictional Statement.

1. The statutory provisions believed to sustain the jurisdiction are Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stats. 938, and Section 129 of the Judicial Code, as amended April 3, 1926, 44 Stats. 233.

2. The statute, the validity of which is involved, is Acts of Florida, November 23, 1828, Section 30 (Revised General Statutes of Florida, Section 2571; Compiled General Laws of Florida, 1927, Section 4211); providing (as construed by the Supreme Court of Florida) that causes of action for personal injuries shall survive the death of either the injured person or the tort-feasor.

3. The date of the decree sought to be reviewed is June 21, 1940 (R. 863). Petition for rehearing was denied July 31, 1940 (R. 894).

4. The case is a proceeding in admiralty to limit liability (R. 1-5). The lower court decreed liability and denied limitation (R. 819-824, 825-835). The Circuit Court of Appeals for the Fifth Circuit affirmed the decree as to liability of the ship but reversed the decree in so far as it held that the liability of the shipowner *in personam* survived his death and allowed damages only against the vessel (R. 863-873) thereby completely determining the rights and liabilities of the parties.

5. Cases believed to sustain the jurisdiction are:

- Aktieselskabet Cuzo v. The Sucarseco*, 294 U. S. 394;  
*Cullen Fuel Co., Inc., v. W. E. Hedger, Inc.*, 290 U. S. 82;  
*The Linseed King*, 285 U. S. 502;  
*Liverpool, Etc., Nav. Co. v. Brooklyn Eastern District Terminal*, 251 U. S. 48;  
*Pendleton v. Benner Line*, 246 U. S. 353;  
*United States v. The Three Friends*, 166 U. S. 1;  
*Hamilton-Brown Shoe Co. v. Wolf Brothers Co.*, 240 U. S. 251;  
*Toledo Co. v. Computing Co.*, 261 U. S. 339.

C.

**The Questions Presented.**

1. Personal injuries are negligently caused, with the privity and knowledge of a shipowner, upon navigable waters within the territorial limits of a State, and the tort-feasor shipowner thereafter dies. The statutory and common law of such State provides that the cause of action for such injuries shall survive. Will the law of the State be applied, and will the cause of action be enforced *in personam*, by an admiralty court in a proceeding to limit liability instituted by the deceased tort-feasor's executrix?

2. A State statute provides that causes of action for personal injuries shall survive the death of the tort-feasor. In the absence of any Act of Congress, does the State statute work such material prejudice to the characteristic features of the general maritime law or so interfere with the proper harmony and uniformity of that law in its international and interstate relations, as to be ineffective and to preclude the enforcement of a claim *in personam* in an admiralty proceeding brought by a deceased shipowner's executrix to limit liability?

3. With regard to its effect upon any characteristic feature of maritime law, is there any distinction between a State death act and a State survival statute which permits enforcement of the death act but precludes enforcement of the survival statute in an admiralty proceeding to limit liability?

#### D.

#### Reasons Relied On for the Allowance of the Writ.

1. The majority decision of said Circuit Court of Appeals by holding the common law principle, "actio personalis moritur cum persona," has been adopted as a part of the general maritime law so as to exclude the operation of a State survival statute, is an erroneous decision of general admiralty law, and directly conflicts with the holding of this Court in *The Harrisburg*, 119 U. S. 199.

2. The majority decision of said Circuit Court of Appeals, that a State statute providing for survival of actions *in personam* against a deceased tort-feasor's estate will not be given effect in a limitation of liability proceeding because to do so will work material prejudice to the characteristic features of the general maritime law, involves an important question of Federal law which has not been, but should be, settled by this Court.

3. In holding that with regard to its effect upon any characteristic feature of maritime law there is a distinction between a death act and a survival statute and that "Decisions about death claims sustained in admiralty are not at all in point," the Circuit Court of Appeals refused to apply the applicable decisions of this Court to the undisputed facts in the case, thereby causing a direct conflict between the decisions of this Court and the Circuit Court of Appeals and rendering a decision upon an important question of general

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admiralty law which is untenable and in conflict with the applicable decisions of this Court.

4. The majority decision of said Circuit Court of Appeals is a decision of a Federal question in a way probably in conflict with applicable decisions of this Court. The particular decisions referred to are:

*The Hamilton*, 207 U. S. 398;

*American Steamboat Co. v. Chace*, 16 U. S. (Wall) 522;

*Ex parte McNeil*, 13 U. S. (Wall) 236;

*Western Fuel Co. v. Garcia*, 257 U. S. 233;

*Sherlock v. Alling*, 93 U. S. 99.

5. Despite the many cases decided by this Court holding that an admiralty court will give effect to a statute of a State giving remedy for wrongful death (which cases the Circuit Court of Appeals refused to follow in this case), there is no decision of this Court as to whether, with regard to its effect on any characteristic feature of maritime law, there is a distinction between a State death act and a State survival statute which permits enforcement of the former but precludes enforcement of the latter in admiralty.

6. The majority decision of said Circuit Court of Appeals is in conflict with its own decision in *Quinette v. Bisso*, 136 Fed. 825, where that court recognized and enforced in admiralty a survival statute of Louisiana, and with the decision of the Circuit Court of Appeals for the Ninth Circuit, in the admiralty case of *Buttner v. Adams*, 236 Fed. 105.

7. The majority decision of said Circuit Court of Appeals, in effect, amends and modifies the United States statutes providing for limitation of liability by providing that such limitation may be obtained, despite privity and knowledge, if the shipowner dies.

8. The majority decision of said Circuit Court of Appeals entirely disregards the decision and holding by this Court in *Hartford Accident & Indemnity Company v. Southern Pacific Company*, 273 U. S. 207, that a limitation proceeding is one essentially *in rem* and *in personam*, which binds the owner's property as well as his person and furnishes a complete remedy for *all* claims whether strictly in admiralty or not.

9. To avoid unnecessary repetition, your petitioners refer to the dissenting opinion of Circuit Judge Hutcheson, reported at pages 868 to 873 of the Record, as reasons why a writ of certiorari should be granted as prayed, and respectfully request that this Court consider said dissenting opinion as a portion of petitioners' brief in support of this petition.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record and of the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its Docket "No. 9218, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., as owner of the American Yacht 'Friendship II,' Appellant, v. Charlotte Cross Just and Anne Elise Gruner, Appellees," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals, in so far as the same (a) holds that no effect can be given to the Florida statutes (providing that the death of a tort-feasor does not extinguish the right of action) because to do so will work material prejudice to the characteristic features of the gen-

eral maritime law and impair its uniformity, and (b) grants limitation of liability, be reversed by the Court, and for such further relief as to this Honorable Court may seem proper.

Dated this August 23, 1940.

SAMUEL W. FORDYCE,  
WALTER R. MAYNE,  
*St. Louis, Missouri,*  
M. L. MERSHON,  
W. O. MEHRTENS,  
*Miami, Florida,*  
*Proctors for Petitioners.*

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SUPREME COURT OF THE UNITED STATES

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CHARLOTTE CROSS JUST AND ANNE ELISE  
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"FRIENDSHIP II",  
*Respondent and Appellant Below.*

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI

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I.

**The Opinions of the Courts Below.**

The opinions (majority and dissenting) of the Circuit Court of Appeals for the Fifth Circuit are dated June 21, 1940. Not yet officially reported, they appear at pages 863 to 873 of the record.

The opinion of the District Court, though not officially reported, appears at pages 819 to 824 of the record, while

the decree of that court containing findings of fact and conclusions of law is found at pages 825 to 835 of the record.

## II.

### Jurisdiction.

A full statement of jurisdiction has been given under the heading "B" in the petition (pp. 4-5), which is here adopted and made a part of this brief.

## III.

### Statement of the Case.

A full statement of the case has been given under heading "A" in the petition (pp. 1-4) and, in the interest of brevity, will not be repeated at this point.

## IV.

### Specifications of Errors.

1. The said Circuit Court of Appeals erred in finding and holding that the common law with respect to abatement of actions *in personam* has been adopted as part of the general maritime law and cannot be modified or supplemented by the common law and statutes of a state providing for survival of such actions.

2. The said Circuit Court of Appeals erred in finding and holding that petitioners' respective causes of action against the yacht owner, Yeiser, *in personam* abated as a result of the death of Yeiser prior to the filing of the petition seeking to exonerate his estate from liability or to limit that liability.

3. The said Circuit Court of Appeals erred in finding and holding that, although personal injuries are negligently

caused with the privity and knowledge of a shipowner upon waters within the territorial limits of a State, and the tort-feasor shipowner thereafter dies, and the statutory and common law of the State provides that the cause of action for such injuries shall survive,—nevertheless, such cause of action abated upon the tort-feasor's death, and cannot be enforced *in personam* by an admiralty court in a proceeding instituted by the deceased tort-feasor shipowner's executrix seeking to limit liability.

4. The said Circuit Court of Appeals erred in finding and holding that with regard to its effect upon any characteristic feature of maritime law, there is a distinction between a death act and a survival statute and that "decisions about death claims sustained in admiralty are not at all in point."

5. The said Circuit Court of Appeals erred in not finding and holding that where personal injuries are negligently caused upon waters within the territorial limits of a State and the tort-feasor thereafter dies, a State statute providing that the cause of action for such injuries shall survive will be enforced in a proceeding in admiralty to limit liability.

6. The said Circuit Court of Appeals erred in not finding and holding that where personal injuries are negligently caused upon waters within the territorial limits of a State and the tort-feasor thereafter dies, the subject is maritime and local in character, and that the specified modification of, or supplement to, the rule applied in admiralty courts when following the common law will not work material prejudice to the characteristic features of the general maritime law nor interfere with the proper harmony and uniformity of that law in its international and interstate relations.

7. The said Circuit Court of Appeals erred in finding and holding that no effect could be given to the Florida statute and common law providing for survivorship of actions *in personam*; that petitioners' causes of action *in personam* had abated; that the decree of the District Court denying limitation of liability should be reversed; and that limitation of liability should be decreed.

## V.

**ARGUMENT.****Summary of the Argument.**

POINT A. The decision of the Circuit Court of Appeals, that the common law rule "actio personalis moritur cum persona" has been adopted as a part of the general maritime law and cannot be modified or supplemented by a State survival statute, is contrary to and in conflict with prior applicable decisions of this Court.

POINT B. The decision of the said Circuit Court of Appeals, that a State statute and common law providing for survival of actions *in personam* against a deceased tortfeasor's estate will not be given effect in a limitation of liability proceeding because to do so will work material prejudice to the characteristic features of the general maritime law, involves an important question of Federal law which has not been, but should be, settled by this Court, and in arriving at said decision the said Circuit Court of Appeals refused to apply the applicable decisions of this Court.

## POINT A.

The decision of the Circuit Court of Appeals, that the common law rule "*actio personalis moritur cum persona*" has been adopted as a part of the general maritime law and cannot be modified or supplemented by a state survival statute, is contrary to and in conflict with prior applicable decisions of this Court.

Congress has not enacted any law relative to the survival of actions in personal injury cases arising on navigable waters of a State. The majority decision of the Circuit Court of Appeals, upon the authority of *Crapo v. Allen* Fed. Cases No. 3,360, and *In re Statler*, 31 Fed. (2d) 767, held that the common law rule that a personal right of action abates upon the death of either party is also the established general maritime law (R. 866, 867-869).

That holding is in direct conflict with the decision of this Court in *The Harrisburg*, 119 U. S. 199, a suit to recover for wrongful death, where the argument was made that the maritime law, in the absence of an Act of Congress or a State statute afforded such a right of action. Mr. Chief Justice Waite, after reviewing all of the earlier decisions, in the absence of a State statute to the contrary, followed the common law, saying (119 U. S. at 213):

"\* \* \* But however this may be, we know of no country that has adopted a different rule on this subject for the sea from that which it maintains on the land; and the maritime law, as accepted and received by maritime nations generally, leaves the matter untouched. It is not mentioned in the laws of Oleron, of Wisbuy, or of the Hanse Towns, 1 Pet. Adm. Dec. Appx., nor in the Marine Ordinance of Louis XIV, 2 Pet. Adm. Dec. Appx.; \* \* \*. Since, however, it is now established that in the courts of the United States no action can be maintained for such a wrong in the absence of a statute

*giving the right, and it has not been shown that the maritime law, as accepted and received by maritime nations generally, has established a different rule for the government of the courts of admiralty from those which govern courts of law in matters of this kind, we are forced to the conclusion that no such action will lie in the courts of the United States under the general maritime law. The rights of persons in this particular under the maritime law of this country are not different from those under the common law, and as it is the duty of courts to declare the law, not to make it, we cannot change this rule."* (Emphasis ours.)

In *The Corsair* (*Barton v. Brown*), 145 U. S. 335, this Court, by Mr. Justice Brown, said (145 U. S. at 344):

" \* \* \* Subsequently in the case of *The Harrisburg*, 119 U. S. 199 (30:358), it was held that in the absence of an Act of Congress or a state statute giving a right of action therefor, a suit in admiralty could not be maintained to recover damages for the death of a human being, caused by negligence. *This was a mere application to the court of admiralty of a principle which had been announced by this court as applicable to courts of common law in the Mobile L. Ins. Co. v. Brame*, 95 U. S. 754 (24:580)." (Emphasis ours.)

In *Western Fuel Co. v. Garcia*, 257 U. S. 233, this Court, by Mr. Justice McReynolds, in an action for wrongful death, approved the above holding, saying (257 U. S. at 240):

" \* \* \* At the common law no civil action lies for an injury resulting from death. *The maritime law as generally accepted by maritime nations leaves the matter untouched* and in practice each of them has applied the same rule for the sea which it maintains on land. *The Harrisburg*, 119 U. S. 204, 213, 7 Sup. Ct. 140, 30 L. Ed. 358; *The Alaska*, 130 U. S. 201, 209, 9 Sup. Ct. 461, 32 L. Ed. 923; *La Bourgogne*, 210 U. S. 95, 138, 139, 28 Sup. Ct. 664, 52 L. Ed. 973." (Emphasis ours.)

In the leading case of the *City of Norwalk*, (D. C. N. Y. 1893). 55 Fed. 98, in an outstanding opinion by Judge Brown, the validity of a state statute giving damages for death by negligence was upheld. Among other things, the Court said (text 107, 112) :

“Still further, it must be borne in mind that the maritime law is not in itself a complete and perfect system. In all maritime courts there is a considerable body of municipal law that underlies the maritime as the basis of its administration. Strictly speaking, the maritime law is that alone which is peculiar to, or which specially concerns, maritime transactions. The general body of the law as regards the ordinary, fundamental rights of persons and property, whether on land or sea, is, as observed by Mr. Justice Field in the passage above quoted, derived from the constituted order of the state, i. e. from the municipal law, which courts of admiralty to a considerable extent must necessarily adopt and follow, subject only to the modifications which the special characteristics of the law of the sea impose on maritime subjects. These general rights and regulations of persons and property are subject to the control of the state and may be changed as the state sees fit, if they are not regulated by congress and do not trench upon its exclusive authority. \* \* \*

“It was upon the recognition of this principle alone, as I understand, that in the case of *The Harrisburg*, 119 U. S. 199, 213, 7 Sup. Ct. Rep. 140, it was decided that no action could be maintained in a court of admiralty of this country for loss of life, aside from statutory authority; namely, *because there is no rule on this subject belonging specially to the maritime law as such. 'It (the maritime law) leaves the matter untouched.'* Page 213, 119 U. S., and page 146, 7 Sup. Ct. Rep. And since the maritime courts in each country follow their own municipal law as regards giving damages for death; and inasmuch as by the common law of this country such a cause of action does not survive,—the latter rule must, therefore, obtain in our courts of admiralty. In

other words, *it is the municipal law that on such a point determines the law applicable in a court of admiralty.* (Emphasis ours.)

“In the case of *The Harrisburg*, 119 U. S. 199, 7 Sup. Ct. Rep. 140, the libel was dismissed, not because of any lack of jurisdiction, but because of the absence of any act of congress creating the right; and because ‘the maritime law, as accepted and received by maritime nations generally, *leaves the matter untouched*,’ and the subsequent absence of any distinct rule in the maritime code; and therefore the courts of admiralty, it was held, must take their rule on that subject from the municipal law. *From that decision it necessarily follows, that within the sphere in which the municipal law is valid and operative, viz. within the navigable waters of the state, the state law, in the absence of any act of congress, as to the survival of any such right of action, or any distinctively maritime rule applicable to the case, must furnish the rule of law as to the right of recovery.* And this in effect is precisely what was said and applied in the case of *The Corsair*.” (Emphasis ours.)

It clearly appears from these decisions that, in the absence of an Act of Congress or a statute of a State, it is the common law and not an independent existing system of maritime law which furnishes the applicable principles controlling abatement or survival of actions in admiralty. Whitlock, “A New Development in the Application of Extra-Territorial Law to Extra-Territorial Marine Facts,” (1908) 22 *Harvard Law Review* 403, 407, shows that “*actio personalis moritur cum persona*” was not part of the law of the Continental countries either afloat or ashore. *Hughes on Admiralty* (2nd Ed.), pages 224 to 227, is to the same effect. Mr. Justice Holmes has consistently pointed out the fact that the maritime law “is not a corpus juris.” It has never been considered as a complete and all-inclusive

ody of substantive law distinct from and co-extensive with the common law itself. The maritime law may be, and often is, supplemented by the common law. Thus, common law principles were applied in *Atlantic Transport Co. v. Ambrovec*, 234 U. S. 52, to sustain a libel *in personam* for personal injuries suffered while loading a ship:

It has often been said that there is no general common law of the United States. *Wheaton v. Peters*, 8 U. S. (Pet.) 591; *Western Union Tel. Co. v. Call Pub. Co.*, 181 U. S. 92; *Erie R. Co. v. Tompkins*, 304 U. S. 64, where it is said (304 U. S. at 78):

"Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the state shall be declared by its legislature in a statute or by its highest court in a decision is not a matter of federal concern. *There is no federal general common law.* Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts."

The only inference is that, while Congress remains silent, the maritime law is supplemented by the common law, and in the United States that means the common law of the State. *Sherlock v. Alling* 93 U. S. 99; *Taylor v. Carryl*, 20 U. S. (How.) 583. Even when admiralty has unquestioned jurisdiction, the common law may have concurrent authority and the State courts concurrent power. *Schoonmaker v. Gilmore*, 102 U. S. 118.

Accordingly, while the general principles of admiralty law follow the common law in refusing to recognize any right of action in the absence of a State statute, the admiralty courts have given effect to the various death stat-

utes of the different States without regard to whether the action was originally brought in the State court at common law (*American Steamboat Co. v. Chace*, 16 U. S. (Wall.) 522; *Sherlock v. Alling*, 93 U. S. 99) or in the federal admiralty court (*The Hamilton*, 207 U. S. 398; *La Bourgogne*, 210 U. S. 94; see *The Corsair*, 145 U. S. 335).

In *The Hamilton*, *supra*, the Circuit Court of Appeals gave effect to a Delaware death statute, in a proceeding to limit liability, saying (146 Fed. 727):

"We cannot doubt that had suits been brought for these deaths in the courts of Delaware the plaintiffs would have succeeded. By the action of the petitioners they are enjoined from prosecuting their claims in the home forum and are compelled to present them here.

"*Every consideration based on equity and natural justice impels us to hold that it was not the purpose of the limited liability act to enable vessel owners to force claimants into the admiralty, and thus avoid claims which are valid and enforceable at common law. The intent was to limit the liability, not to destroy it.*" (Emphasis ours.)

Thereafter, certiorari was granted. This Court, in an opinion by Mr. Justice Holmes, affirmed that decision and its reasoning, saying (207 U. S. 398, at 404):

" \* \* \* The doubt in this case arises as to the power of the states where Congress has remained silent.

"That doubt, however, cannot be serious. The grant of admiralty jurisdiction, followed and construed by the Judiciary Act of 1789 (1 Stat. at L. 77, Ch. 20, Sec. 9), 'saving to suitors, in all cases, the right of a common-law remedy where the common law is competent to give it' (Rev. Stat., Sec. 563, Cl. 8, U. S. Comp. Stat., 1901, p. 457), leaves open the common-law jurisdiction of the state courts over torts committed at sea. This,

we believe, always had been admitted. *Martin v. Hunter*, 1 Wheat. 304, 337, 4 L. Ed. 97, 105; *The Hine v. Trevor* (*The Ad-Hine v. Trevor*), 4 Wall. 555, 571, 18 L. Ed. 451, 456; *Leon v. Calceran*, 11 Wall. 185, 20 L. Ed. 74; *Manchester v. Massachusetts*, 139 U. S. 240, 262, 35 L. Ed. 159, 166, 11 Sup. Ct. Rep. 559. And as the state courts in their decisions would follow their own notions about the law and might change them from time to time, it would be strange if the state might not make changes by its other mouthpiece, the legislature."

Although the Death on the High Seas Act of March 30, 1920, c. 111, 46 U. S. C. A. Secs. 761-768, has superseded some of these decisions, the principle they establish has never been repudiated. The Act does not alter the prior law in so far as the Great Lakes and the territorial waters of the States are concerned; but, by its own terms, the Act expressly excludes its operation within State waters and does not attempt to affect State statutes either "giving or regulating" (as by providing for survival of) actions for personal injuries resulting in death upon navigable waters within the boundaries of a State. *O'Brien v. Luckenbach S. S. Co.*, (C. C. A. 2, 1923) 293 Fed. 170. The law of the place where the injury occurs determines whether or not the claim for damages survives. *Ormsby v. Chace*, 290 U. S. 387. The mere fact that this law is declared by the highest court in a decision, rather than by the Legislature in a statute, is not a matter of Federal concern. *Erie R. Co. v. Tompkins*, 304 U. S. 64.

In Florida (by common law and by statute) a cause of action for personal injury survives the death of either the party injured or the tort-feasor. See Acts of Florida, Nov. 23, 1828, Section 30, being Sec. 4211, C. G. L., 1927; *Waller v. First Savings & Trust Co.* (1931), 103 Fla. 1025, 138 So. 780; *Granat v. Biscayne Trust Co.* (1933), 109 Fla. 485, 147 So.

850; *Penn v. Pearce* (1935), 121 Fla. 3, 163 So. 288; *International Shoe Co. v. Hewitt* (1926), 123 Fla. 587, 167 So. 7 and *State v. Parks* (1937), 129 Fla. 50, 175 So. 786.

In holding (upon the authority of the District Court case of *Crapo v. Allen*, Fed. Cases No. 3360, and *In Re Statler*, 31 F. (2d) 767) that the common law principle that cause of action for personal injuries die with the person is also the general maritime law which cannot be modified or supplemented by a State survival statute, the Circuit Court of Appeals refused to follow and conflicted with the applicable decisions of this Court. Neither of the cases cited by the Circuit Court were in point. In the early case of *Crapo v. Allen, supra*, the death for which suit was brought occurred upon the high seas and not in the territorial waters of Massachusetts. There was nothing to show (as in *The Hamilton, infra*) that Massachusetts was the State of the ship's flag. The general statements of District Judge Sprague in that case have not been sustained by subsequent cases and are directly contradicted by *The Harrisburg, supra*, *The Corsair, supra*, *Western Fuel Co. v. Garcia, supra*, and, as pointed out in *American Steamboat Co. v. Chace*, 16 U. S. (Wall.) 522, by Mr. Justice Clifford, "Judge Sprague also applied the same rule in the case of *Crapo v. Allen*, 1 Sprague 184, but in a later case he left the question open, with the remark that it cannot be regarded as settled law that an action cannot be maintained in such a case." *Cutting v. Seabury*, 1 Sprague 522."

The case of *In Re Statler, supra*, is not in point and does not support the principle for which it was cited. The cited case, being a suit founded on the Seaman's Act, 41 Stat. 1007 (1920, 46 U. S. C. A. 638), is merely authority to the effect that where a cause of action is given by a Federal statute, the principles of the common law (not maritime law) will determine whether such action survive when not

ing is said in the statute itself about survivorship. See *Schreiber v. Sharpless*, 110 U. S. 76, and cases cited in the Statler opinion.

It is *significant to note* that the majority opinion of the Circuit Court of Appeals, while refusing to apply the principles announced in *The Harrisburg*, *supra*, *The Hamilton*, *supra*, *Western Fuel Co. v. Garcia*, *supra*, and other cases decided by this Court upon the ground that "Decisions about death claims sustained in admiralty are not at all in point" (R. 866) nevertheless based its own contrary conclusion upon two cases directly involving "death claims sustained in admiralty."

It is respectfully submitted that the majority decision of the Circuit Court of Appeals that the common law rule "*actio personalis moritur cum persona*" has been adopted as a part of the general maritime law and therefore cannot be modified or supplemented by a State survival statute, is contrary to and in conflict with the above cited decisions of this Court.

#### POINT B.

The decision refusing to give effect to the Florida statute and common law providing for survivorship of actions for personal injuries because to do so would impair the uniformity of admiralty, involves an important question of Federal admiralty law which is in conflict with applicable decisions of this Court and which should be settled by this Court.

This Court has never decided whether admiralty courts will give effect to the statutory and common law of a State providing for survival of actions and permit enforcement of a claim *in personam* against a deceased tort-feasor's estate for personal injuries sustained upon the territorial waters of the State. Despite the importance of the question

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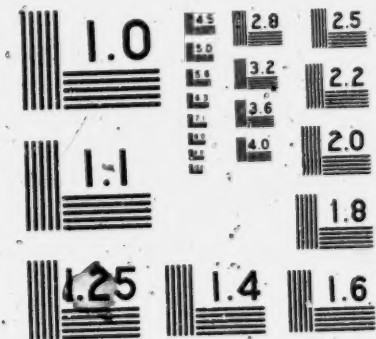
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involved, there is no decision of any court (other than the case at bar) directly upon the point. There are, of course, many decisions of this Court holding that effect is to be given in admiralty to a State statute (some of which are "death acts" and some "survival acts") providing a remedy for wrongful death. The majority of the Circuit Court of Appeals held that these cases were not in point and refused to apply the principles announced in them (R. 866). No valid distinction exists between a death act and a survival statute as to the effect upon maritime law. The death cases decided by this Court are not only applicable to this case, but the principles therein announced control this controversy. The majority decision of the Circuit Court of Appeals is untenable and in direct conflict with those decisions of this Court.

No State legislation is valid if it contravenes the essential purpose expressed by an Act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and unity of that law in its international and interstate relations. This Court has held that with respect to those activities directly connected with commerce and navigation in their interstate and international aspects, the law must be uniform throughout the United States, and the various States may not modify or vary it. *Southern Pac. Co. v. Jensen*, 244 U. S. 205; *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149. The able dissents of four Judges in each of the above cases, led by Mr. Justice Holmes, clearly show, however, that the maritime law has not preempted the entire field of personal injuries but, on the contrary, State statutes applying a remedy where there was none before (as in the instant case) will be recognized and enforced in admiralty. It is well settled that though the contract or tort is maritime if it is local in character and has no direct relationship to navigation, State laws are applicable to determine rights and

liabilities and to regulate the method of seeking relief because they do not work material prejudice to any characteristic feature of the maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations. *Western Fuel Co. v. Garcia*, 257 U. S. 233; *Grant Smith-Porter Co. v. Rohde*, 257 U. S. 469; *Miller's Indemnity Underwriters v. Braud*, 270 U. S. 51; *Carlin Constr. Co. v. Heaney*, 299 U. S. 41.

In the instant case the petitioners were not seamen (R. 2, 28, 33, 829). All of the parties were residing in Florida at the time, and the vessel was continuously at all times in State waters (R. 830). The captain and the engineer had their homes in Florida (R. 453), and Yeiser, the owner, lived aboard the vessel (R. 826). The vessel was docked at Miami, Florida, and Ft. Myers, Florida (R. 464). The trip was for pleasure and not for commerce. No fares were paid nor any money earned by operation of the yacht (R. 829). The vessel was not engaged in commerce, interstate or any other kind.

A tort action for wrongful death has no relationship to navigation, no characteristic features of maritime law are prejudiced thereby and there is no necessity for uniformity because the subject is local in character. Thus in *Western Fuel Co. v. Garcia*, 257 U. S. 233, this Court in affirming the right to sue in admiralty to recover damages by virtue of a State death statute, said (257 U. S. at 241, 242):

"In *Southern Pacific Co. v. Jensen*, 244 U. S. 205, 37 S. Ct. 524, 61 L. Ed. 1086, L. R. A. 1918C, 451, Ann. Cas. 1917E, 900; *Chelentis v. Luckenbach Steamship Co.*, 247 U. S. 372, 38 S. Ct. 501, 62 L. Ed. 1171; *Union Fish Co. v. Erickson*, 248 U. S. 308, 39 S. Ct. 112, 63 L. Ed. 261, and *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 40 S. Ct. 438, 64 L. Ed. 834, 11 A. L. R. 1145, we have recently discussed the theory under which the general maritime law became a part of our national law and pointed out the inability of the states to change its gen-

eral features so as to defeat uniformity—but the power of a state to make some modifications or supplements was affirmed.

“As the logical result of prior decisions we think it follows that where death upon such waters follows from a maritime tort committed on navigable waters within a state whose statutes give a right of action on account of death by wrongful act, the admiralty courts will entertain a libel *in personam* for the damages sustained by those to whom such right is given. *The subject is maritime and local in character* and the specified modification of or supplement to the rule applied in admiralty courts when following the common law, will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations. *Southern Pacific Co., v. Jensen, supra.*” (Emphasis ours.)

Such holding that “the subject” (being personal injuries resulting in death by wrongful act upon State waters) is *maritime and local in character*, is equally applicable where the “subject” is “personal injuries from wrongful act upon State waters *not* resulting in death.”

Such a conclusion was reached in *Buttner v. Adams, et al.*, (C. C. A. 9, 1916), 236 Fed. 105, where, in reversing a decree of the lower court which had dismissed a libel to recover for personal injuries, the Court of Appeals said (text 108):

“While the admiralty jurisdiction cannot be enlarged by State enactment (The *Lottawanna*, 21 Wall. 558, 22 L. Ed. 654), it is well settled that the maritime law may be changed by state enactment conferring rights of action arising out of marine torts resulting in death (The *Hamilton*, 207 U. S. 398, 28 S. Ct. 133, 52 L. Ed. 264; *LaBourgogne*, 210 U. S. 95, 28 S. Ct. 664, 52 L. Ed. 973). *Such being the case as to torts resulting in death, no good reason is seen why the admiralty court may not have jurisdiction of a cause to recover damages for per-*

sonal injuries resulting from a marine tort against those whom the State law declares shall be primarily liable to respond in damages therefor. . . . We hold that a liability so created by state law and arising out of a marine tort is subject to the jurisdiction of a court of admiralty. It is believed that this view of the question does not contravene any decision of a federal court, or result in prejudice to the uniform administration of maritime law." (Emphasis ours.)

Mr. Justice Holmes, in *The Hamilton*, 207 U. S. 398 (*supra*, p. 20), has permanently and adequately disposed of any concern over interference with uniformity, saying 207 U. S. at 405):

"We pass to the other branch of the first question—whether the state law, being valid, will be applied in the admiralty. Being valid, it created an *obligatio*—a personal liability of the owner of the *Hamilton* to the claimants. *Slater v. Mexican Nat. R. Co.*, 194 U. S. 120, 126, 48 L. Ed. 900, 902, 24 Sup. Ct. Rep. 581. This, of course, the admiralty would not disregard, but would respect the right when brought before it in any legitimate way. *Ex parte McNiel*, 13 Wall. 236, 243, 20 L. Ed. 624, 626. It might not give a proceeding *in rem*, since the statute does not purport to create a lien. It might give a proceeding *in personam*. *The Corsair* (*Barton v. Brown*, 145 U. S. 335, 347, 36 L. Ed. 727, 731, 12 Sup. Ct. Rep. 949. *If it gave the latter, the result would not be, as suggested, to create different laws for different districts. The liability would be recognized in all. Nor would there be produced any lamentable lack of uniformity. Courts constantly enforce rights arising from and depending upon other laws than those governing the local transactions of the jurisdiction in which they sit.*" (Emphasis ours.)

No distinction in principle and reasoning from the point of view of uniformity, can be made between a survival statute and a wrongful death statute of which Mr. Justice

Holmes was speaking. Nevertheless, the majority opinion refused to recognize or follow the reasoning of Mr. Justice Holmes or the later decision of this Court in *Western Fuel C. v. Garcia*, *supra*, p. 16, *infra*, p. 25.

The opinion of the trial judge in the present case (R. 823) illustrates and follows the reasoning of the authorities here cited. Judge Holland said:

"As to a conflict with the uniformity required by the United States Constitution in regard to admiralty matters, I do not think the point is well taken because such uniformity is no more stricken down by a survivorship statute in regard to personal injury damages than by recognition of the right of action for death. In other words, if there is a statute in Florida, which there is, giving rise to a new action for death, and should there be no such statute in another state, for instance, South Carolina, certainly there would be a lack of uniformity there, yet that lack of uniformity is not held to be in conflict with the constitution. Likewise the survivorship of a personal injury damage is recognized by a Florida statute, and suppose the same is not recognized by a South Carolina statute. The same lack of uniformity exists, but in my opinion this lack of uniformity is not in conflict with the constitutional provisions of uniformity required or admiralty."

Another trial judge in an earlier case stated and applied the rule in admiralty, as announced by Mr. Justice Holmes. See *Amoth v. United States, et al.* (D. C. Ore., 1925), 3 F. (2d) 848.

"As to the effect upon any characteristic feature of the maritime law there is no distinction between a death act and a survival statute. At common law and in the maritime law which in the absence of a statute followed the common (municipal) law, there was no cause of action if, and after, either the injured person or the tort-feasor died. The cause of action abated upon the death of either party, and there was neither survival nor revival. It cannot be

said that death acts did not invade the law in the field of personal injuries, since there could be no wrongful death without personal injury. Death acts and survival acts both have a direct relationship to personal injuries and both provide a remedy for personal injury done to another. Neither can it be contended that death acts "do not modify" the existing maritime law which, in the absence of such statute, followed the common law. Before the passage of State "death" and "survival" acts there was no cause of action for wrongful death to be enforced. Likewise, there was no existing cause of action for personal injuries, if and after the tort-feasor died. State death acts changed, modified and supplemented the common law rule, followed in admiralty, by *giving a cause of action* for wrongful death with right to recover damages for such death and, in certain instances, the right to recover damages which the injured person might have recovered if he had lived) where none had existed before. The effect of State statutes providing for survival of causes of action for personal injuries (not resulting in wrongful death) must necessarily be to likewise supplement the common law rule followed in admiralty in the absence of such statute by giving a substantive right, enforceable by common-law remedy, where such right had not theretofore existed.

As shown by the cases herein cited, it is competent for the States to pass such statutes providing a remedy for personal injuries resulting in wrongful death, and they will be recognized and enforced in admiralty courts, without regard to whether they are death acts creating a new cause of action or survival acts continuing the cause of action.

The enforcement in admiralty courts of State statutes providing for the *survival of actions* is no new matter. In the case of *In re Long Island, etc.; Transportation Co.*, (D. C., 1881) 5 Fed. 599, the court, while limiting liability for wrongful death, said (text 608):

"It has been seriously doubted whether the rule of the common law, that a cause of action for an injury to the person dies with the person, is also the rule of the maritime law. There is some authority for the proposition that it is not, and that in admiralty a suit for damage in such a case survives. *The Sea Gull*, 1 L. T. R. 15; *Cutting v. Seabury*, 1 Sprague 522; *The Guldfaxe*, 19 L. T. R. 748; *The Epsilon*, 6 Ben. 381. But however it may be in respect to the original jurisdiction of admiralty courts, I see no valid reason why the right of a person to whom, under the municipal law governing the place of the transaction and the parties to it, the title to the chose in action survives or a new right to sue is given for damages resulting from a tort, that admiralty courts, in the exercise of their jurisdiction in personam over marine torts, should not recognize and enforce the right so given. It has been held by the Supreme Court that such legislation by a state as applied to marine torts does not, in the absence of a commercial regulation by Congress covering the same field, intrench upon the exclusive powers given to the general government. *Steamboat Co. v. Chase*, 16 Wall. 522." (Emphasis ours.)

The Supreme Court of the United States, as well as the Circuit Court of Appeals for the Fifth Circuit, has recognized and enforced State survival acts.

Thus, in *American Steamboat Co. v. Chace*, (1873) 16 Wall. (U. S.) 522, the Rhode Island statute providing for survival of actions was held valid, this Court saying:

"Attempt is made to deny the right to such a remedy in this case, upon the ground that the operation of the saving clause must be limited to such causes of action as were known to the common law at the time of the passage of the judiciary act; and the argument is that the cause of action alleged was not known to the common law at that period, which cannot be admitted, as actions to recover damages for personal injuries prosecuted in the name of the injured party were well known even in the early history of the common law. Such

actions, it must be admitted, did not ordinarily survive, but nearly all the states have passed laws to prevent such a failure of justice, and the validity of such laws has never been much questioned. *R. R. Co. v. Barron*, 5 Wall. 90 (72 U. S. XVII, 591).'' (Emphasis ours.)

*The Corsair*, (1892) 145 U. S. 335, illustrates that a survival statute is valid and enforceable in an admiralty court. There the claim was based solely on the Louisiana Code providing for the survival of actions for injuries resulting in death. The libel was *in rem* and while the court affirmed a dismissal of the libel because the Louisiana statute gave only a remedy *in personam* and not a remedy *in rem*, nevertheless, in discussing the applicable law, this Court said (145 U. S. at 347):

"In much the larger class of cases, the lien is given by the general admiralty law, but in other instances, such for example as insurance, pilotage, wharfage, and materials furnished in the home port of the vessel, the lien is given, if at all, by the local law. As we are to look, then, to the local law in this instance for the right to take cognizance of this class of cases, we are bound to inquire whether the local law gives a lien upon the offending thing. If it merely gives a right of action *in personam* for a cause of action of a maritime nature, the district court may administer the law by proceedings *in personam*, as was done with a claim for half pilotage dues under the law of New York, in the case of *Ex parte McNiel*, 80 U. S. 13 Wall. 237 (20:624), but unless a lien be given by the local law, there is no lien to enforce by proceedings *in rem* in the court of admiralty." (Emphasis ours.)

The Massachusetts survival statute came before the court in *The Albeft Dunois*, (1900) 177 U. S. 24, a proceeding for limitation of liability. The admiralty court upheld and enforced a claim for a wrongful death, based upon that statute.

The Louisiana survival statute (which was considered in *The Corsair*, *supra*), giving to a survivor the right of action

for the damages which the deceased might have recovered had he survived the injury, was later upheld and enforced *in personam* by the admiralty courts.

In *Quinette v. Bisso et al.* (1905), 136 Fed. 825 (certiorari denied, 199 U. S. 606), the Circuit Court of Appeals for the Fifth Circuit recognized and enforced that survival statute of the State of Louisiana. The District Court had dismissed, on the ground of contributory negligence, a libel *in personam* to recover damages, brought under the Louisiana statute, resulting from the drowning of libelant's daughter. In reversing the lower court upon its finding of contributory negligence and directing entry of judgment for the libelant, the Circuit Court of Appeals recognized the State statute as giving the right of action, making contributory negligence a defense, if proved, and fixing the measure of damages to include those which the deceased might have recovered, saying (136 Fed., text 838):

"Without this statute the libelant could not maintain her libel. *The statute must be applied in admiralty just as if the suit had been brought in the state court, and any defenses which are open to the defendant under the jurisprudence of the state, if successfully maintained, will bar recovery under the libel.*" (Emphasis ours.)

It is noteworthy that in the *Quinette* case, the admiralty court not only adopted and enforced the State statute, but held that it was controlled by the decisions of the State courts in construing the statute; and, that the admiralty court adjudged in one lump sum the aggregate damages to be recovered, which included under the express terms of the statute "the damages which the deceased could have recovered had she survived the injury."

From the decisions of this Court, it is clear that no violation of uniformity of maritime law is involved in giving effect to the Florida common law and statute under which petitioners' causes of action for personal injuries survived the death of the tort-feasor, Yeiser. The cause of action

*in rem* against the yacht was not affected by the death of its owner (*The Ticelene*, 208 Fed. 670). There also existed a cause of action against the owner in his lifetime. The Florida common law and statute make no attempt (as in death cases) to introduce into admiralty a new and strange kind of cause of action. On the contrary they merely preserve and confirm to injured persons, notwithstanding the death of the tort-feasor, the identical cause of action which maritime law, as well as the common law of Florida, gave to such persons, so that courts of admiralty following the Florida common law and statute, may continue to enforce such causes of action.

Precisely the same reasoning and argument used by the deceased tort-feasor's executrix, and adopted by the majority of the Circuit Court of Appeals in refusing to give effect to the Florida law, was advanced against the enforcement of State death acts, in *Sherlock v. Alling*, 93 U. S. 99. There, this Court, as early as 1876, held such reasoning and argument to be untenable and entirely devoid of merit.

The petitioners were already asserting their common-law remedy for the enforcement of their causes of action against the estate. They never invoked the admiralty jurisdiction nor asserted a maritime lien against the yacht but were forced into the admiralty court by the petition of the executrix for limitation of liability (which was strictly a defensive maneuver) and they were not only forbidden to go elsewhere but were commanded to file their claims in season or else get nothing. The limitation proceeding, however, was one essentially *in rem* and *in personam*, binding the owner's property as well as his person and furnishing a complete remedy for all claims whether strictly in admiralty or not. *Hartford Accident & Indemnity Co. v. Southern Pac. Co.*, 273 U. S. 207. Having once acquired jurisdiction, both *in rem* and *in personam*, the admiralty court was competent to give petitioners a complete remedy not only against the yacht but also against the deceased tort-feasor's estate.

The Circuit Court of Appeals, in refusing to give effect to the Florida law, has decided an important question of Federal Admiralty law which has not been, but should be, decided by this Court; that in arriving at its decision a majority of the said Circuit Court of Appeals has refused to recognize the above cited applicable decisions of this Court, and by so doing has reached a decision which directly conflicts with those decisions of this Court.

### Conclusion.

It is respectfully submitted, therefore, that this case is one calling for the exercise by this Court of its supervisory powers, in order that proper effect be given to the applicable decisions of this Court and that the important question of admiralty law here involved be permanently settled; and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals for the Fifth Circuit and finally reverse such decision in so far as it holds that no effect can be given in admiralty to the statutory and common law of Florida providing for survival of actions for personal injuries.

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